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## Supreme Court Justice Brett Kavanaugh and Accusations of Sexual Assault in the Media

*Joleen Traynor*

Joleen Traynor is a recent graduate of Seton Hall University where she earned degrees in Political Science and Philosophy, and a minor in Diplomacy and International Relations. She hopes her research will serve to bring greater awareness and legitimacy to accusations of sexual assault, and the media's role in covering these stories. During her time on campus, she was a member of the Honors Program, Pi Sigma Alpha, and the Student Alumni Association. She will begin law school in the fall of 2019.

**M**y fellow Americans, tonight I speak to you from the East Room of the White House regarding one of the most profound responsibilities of the president of the United States, and that is the selection of a Supreme Court justice.<sup>1</sup>

On June 27, 2018, Justice Anthony Kennedy announced his retirement from the Supreme Court after serving for over thirty years on the bench. Less than two weeks later, on July 9th, President Trump announced Judge Brett Kavanaugh as his pick to replace him. Kavanaugh has served on the DC Circuit Court of Appeals since 2006<sup>2</sup>, and has remained a staunch member of the conservative bloc within the Beltway. He was praised by the President for his “impeccable credentials, unsurpassed qualifications and a proven commitment to equal justice under the law<sup>3</sup>”. The media also played a role in this nomination process. Print and news media outlets added to the collective noise; traditionally liberal outlets were opposed, and more conservative outlets praised him, and the President, as a terrific choice to succeed Justice Kennedy. The political narrative, or the way in which different media outlets covered the confirmation process, and the inherent bias that came with it, is central to understanding Kavanaugh's journey to the

Supreme Court. Nonetheless, his nomination was contentious from the beginning, with advocates on both sides of the aisle fiercely fighting both for and against his confirmation.

It started when the entire country collectively gasped, on September 16th, when The Washington Post posted a story about a professor from California, Dr. Christine Blasey Ford. Dr. Ford had written a letter, that was later leaked, to Senator Diane Feinstein in July. The letter detailed an accusation of sexual assault that she claimed was committed by Kavanaugh when the two were in high school. Kavanaugh's confirmation to the court initially appeared to be another easy victory for the Republicans, especially in an election year. However, these allegations rocked Capitol Hill and only further inflamed the partisan divide that has gripped this country for years. This begs a greater question: how did the political narrative impact the confirmation process of Supreme Court nominee Brett Kavanaugh?

By explaining the nomination, and eventual confirmation process of Judge Brett Kavanaugh to the Supreme Court of the United States, the author will argue that the media negatively impacted the confirmation process but did not ultimately end his eventual confirmation to the Court. This narrative is imperative to the vitality and the future of the Supreme Court, its members, and for the Senators that voted in favor of Justice

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<sup>1</sup> *The New York Times*, July 9, 2018, <https://www.nytimes.com/2018/07/09/us/politics/trump-supreme-court-announcement-transcript.html>.

<sup>2</sup> Matthew Nussbaum, “Brett Kavanaugh: Who is he? Bio, facts, background and political views,” *Politico*, July 9, 2018,

<https://www.politico.com/story/2018/07/09/brett-kavanaugh-who-is-he-bio-facts-background-and-political-views-703346>.

<sup>3</sup> *The New York Times*, op. cit.

Kavanaugh. The partisanship that entrenched the confirmation process under which Justice Kavanaugh is ultimately confirmed will also foreshadow how potential nominees to the bench will be treated in future Supreme Court nomination processes.

This examination will rely on various news outlets and stories to chronicle his confirmation process from his initial announcement on July 9, 2018, until his confirmation to the Court on October 6, 2018. This general timeline of events will also include peripheral accounts of sexual assault that allegedly occurred during the 1980's. Although these specific incidents are outside the initial scope of this inquiry, they are vital to understanding and analyzing how the political narrative influenced this confirmation process. The news outlets relied on include, but are not limited to, The Washington Post, The New Yorker, The New York Times, Fox News, CNN, and social media sites such as Twitter. The author argues that the political narrative was impacted in this process through unsubstantiated claims, by creating provocative narratives, and by inflaming party politics.

Even from the early days of his initial nomination to the Court, and while Justice Kavanaugh and his team were in the early stages of meeting and persuading Senators, Americans were divided over whether to confirm him. According to the Pew Research Center, approximately one week after his initial nomination, 41% of individuals were in favor of confirmation, and 36% opposed<sup>4</sup>. This division largely fell along party lines; for those who identify as Republican, or Republican-leaning, 73% felt he should be confirmed, and among those who identified as Democrats, or Democratic-leaning, 63% believed that the Senate should not confirm him<sup>5</sup>. This data shows that partisanship and divisiveness were not established by the nomination of Justice Brett Kavanaugh, instead they were further inflamed

and exaggerated after his nomination, and further still by subsequent allegations of sexual assault and misconduct.

The methodology that will be used for the analysis of this paper will rely upon a qualitative interpretation of the allegations made by Judge Kavanaugh's accusers, as well as a qualitative analysis of the news and print media. The way these accusations are detailed will play an important role in evaluating the forthcoming arguments to be made. How the media reiterates these stories, as well as how it handles these accusations have largely influenced the greater public and the overall political narrative surrounding Justice Kavanaugh's confirmation. In some instances, the author will also rely on quantitative data from sources, such as the Pew Research Center, as well as polls and surveys independently conducted by various media outlets to gauge the foreseeability of the Kavanaugh confirmation and any potential implications or repercussions of his impending career on the bench. This combination of statistics and figures, along with a qualitative analysis of the arguments to be made, provides a strong foundation upon which future arguments can be made regarding allegations of sexual assault within the Supreme Court.

Throughout this inquiry, a number of important terms will be used to describe different actions and events. The first accuser, Dr. Christine Blasey Ford, describes an incident that occurred between her and Judge Kavanaugh as "sexual assault", where she claims to have been pushed onto a bed, where "he [Kavanaugh] began running his hands over my body and grinding his hips into me"<sup>6</sup>. She describes being groped, fearing that she might be raped, or inadvertently killed<sup>7</sup>. This is the definition of sexual assault put forward by Dr. Ford in her opening statement during her testimony to the Senate Judiciary Committee. The act of unwanted touching or groping is the

<sup>4</sup> Pew Research Center. <http://www.people-press.org/2018/07/17/americans-divided-on-kavanaughs-nomination-to-the-supreme-court/>.

<sup>5</sup> IBID.

<sup>6</sup> *Politico Staff*, "Full transcript: Christine Blasey Ford's opening statement to the Senate Judiciary Committee,"

*Politico*, September 26, 2018, <https://www.politico.com/story/2018/09/26/christine-blasey-ford-opening-statement-senate-845080>.

<sup>7</sup> IBID.

definition that will be used by the author throughout this paper. A second term, sexual misconduct, is similarly characterized by Judge Kavanaugh's second accuser, Deborah Ramirez, in her description of an alleged incident when the two were classmates at Yale. She recalls an incident where she alleges Judge Kavanaugh exposed himself to her during a dorm party, and when she attempted to push the person away, she touched the exposed penis<sup>8</sup>. This incident, and other example of indecent exposure will facilitate the author's use of the term 'sexual misconduct' for the purpose of this analysis. Lastly, the third accuser of Judge Kavanaugh's, Julie Swetnick, details accusations of assault and rape at several parties during the 1980's where Justice Kavanaugh was present. In her declaration that was posted on Twitter by her lawyer Michael Avenatti, she claims that she was victim of a "gang rape", where "boys lined up outside rooms at many of these parties waiting for their 'turn' with a girl inside the room"<sup>9</sup>. Sexual interaction or intercourse against the will of one of the parties involved will constitute the author's definition of rape for the analysis of this paper. How each woman recalls these incidents is crucial to their, and the Senate Judiciary Committee's, understanding of these definitions. Each woman recalls a different incident which involved Judge Brett Kavanaugh and their own unique definitions of these incidents are important to the overall framing and understanding of these concepts.

The three separate cases of Dr. Christine Blasey Ford, Deborah Ramirez, and Julie Swetnick will be told through the narrative of the most

central ways in which the political narrative played a role in Justice Kavanaugh's eventual confirmation. The first major component of this, and the allegations of all three women fit into this subset, is the reliance on unsubstantiated claims on the part of the print and news media and the greater public.

Initially, when Dr. Ford had written the letter to her Congresswoman, Representative Anna Eshoo, who represents the 18th District in California, the letter was anonymous. The letter eventually leaking to the media prompted Dr. Ford to come forward with her story, but only after various news outlets began reporting it. Her story was initially published, and remains, as a story consisting of unsubstantiated claims. Time plays a key role in Dr. Ford's allegation; she recalls that the alleged event took place in the early 1980's, and since so much time has passed, she does not have any physical evidence that the assault took place. Due to the nature of the incident, it would be difficult for any physical evidence to be produced to corroborate her claims. Many Democrats, and Dr. Ford herself, have called for an FBI investigation into this alleged incident. However, a thorough investigation would prove quite difficult because there is no forensic evidence or crime scene to investigate<sup>10</sup>.

Dr. Ford admits that she did not tell anyone else of the assault at the time of the incident. She does not possess any physical evidence, and any evidence she does possess includes discrepancies. She did not speak of the attack until 2012, when she spoke about it in couple's therapy with her husband. The therapist's notes from that session

<sup>8</sup> Ronan Farrow and Jane Mayer, "Senate Democrats Investigate A New Allegation of Sexual Misconduct, From Brett Kavanaugh's College Years," *The New Yorker*, September 23, 2018, [https://www.newyorker.com/news/news-desk/senate-democrats-investigate-a-new-allegation-of-sexual-misconduct-from-the-supreme-court-nominee-brett-kavannahs-college-years-deborah-ramirez?mbid=nl\\_Daily%20092418&CNDID=36995681&utm\\_source=Silverpop&utm\\_medium=email&utm\\_campaign=Daily%20092418&utm\\_content=&spMailinGID=14305130&spUserID=MTMzMTgzODA5NDM0S0&spJobID=1481955315&spReportId=MTQ4MTk1NTMxNQS2](https://www.newyorker.com/news/news-desk/senate-democrats-investigate-a-new-allegation-of-sexual-misconduct-from-the-supreme-court-nominee-brett-kavannahs-college-years-deborah-ramirez?mbid=nl_Daily%20092418&CNDID=36995681&utm_source=Silverpop&utm_medium=email&utm_campaign=Daily%20092418&utm_content=&spMailinGID=14305130&spUserID=MTMzMTgzODA5NDM0S0&spJobID=1481955315&spReportId=MTQ4MTk1NTMxNQS2).

<sup>9</sup> Avenatti, Michael. Twitter Post. September, 26, 2018, 9:42 AM. [https://twitter.com/MichaelAvenatti/status/1044960428730843136/photo/1?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed&ref\\_url=https%3A%2F%2Fwww.cnbc.com%2F2018%2F09%2F26%2Fmichael-avenatti-identifies-kavanaugh-accuser-as-julie-swetnick.html](https://twitter.com/MichaelAvenatti/status/1044960428730843136/photo/1?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed&ref_url=https%3A%2F%2Fwww.cnbc.com%2F2018%2F09%2F26%2Fmichael-avenatti-identifies-kavanaugh-accuser-as-julie-swetnick.html).

<sup>10</sup> Andrew Kragie, "Christine Blasey Ford and the Search for a Standard of Proof," *The Atlantic*, September 23, 2018, <https://www.theatlantic.com/politics/archive/2018/09/christine-blasey-ford-and-the-search-for-a-standard-of-proof/571063/>.

do not include Judge Kavanaugh's name, and from *The Washington Post*, "the notes say four boys were involved, a discrepancy Dr. Ford says was an error on the therapist's part. Dr. Ford said there were four boys at the party but only two in the room."<sup>11</sup> These factors are important to the overall narrative of these allegations, and how the media's interactions with this information slowed Justice Kavanaugh's confirmation process.

Not long after, a second woman came forward with allegations of sexual assault, Deborah Ramirez. On September 23, 2018, *The New Yorker* published a story that allegedly took place while Ramirez and Judge Kavanaugh were in college at Yale University. Ramirez's story also fits the narrative of unsubstantiated claims because, similar to Dr. Ford, she does not have any physical evidence of the assault. Furthermore, she even openly admits to lapses in her memory of the altercation. In the story, she speaks of memory gaps, and being hesitant to speak publicly about the assault because she had been drinking at the time<sup>12</sup>. She spent several days reassessing her memory before formally accusing Justice Kavanaugh.<sup>13</sup>

At the time of the writing of the article, Ramirez called for an FBI investigation into her claims. While at a party in college, Ramirez alleges that Justice Kavanaugh exposed himself to her and thrust his exposed penis in her face. In an effort to push him away, she inadvertently touched the person and his exposed penis. For the story, *The New Yorker* admitted to not being able to confirm the story with any other eyewitnesses who were allegedly at the party. Ramirez herself has also been criticized for waiting many years before coming forward, raising questions of a political motivation. Due to the nature of the incident, and

no other corroborating eyewitnesses, Ramirez's entire allegation is based on unsubstantiated claims, thus showing the media's willingness to post stories without full vetting.

In a sworn declaration posted on Twitter by her lawyer Michael Avenatti, Justice Kavanaugh's third accuser, Julie Swetnick detailed multiple accounts of sexual assault, even rape, at parties where Justice Kavanaugh was present. In this statement, Swetnick claims to have seen Justice Brett Kavanaugh and his friend, Mark Judge, engage in inappropriate behavior and "this conduct included the fondling and grabbing of girls without their consent."<sup>14</sup> Similar to the allegations made by Dr. Ford and Ramirez, Swetnick's claims are not backed up by any concrete evidence, nor does she claim that there were any eyewitnesses to this particular act done to her by Justice Kavanaugh at one of these parties. Additionally, her story relies on numerous unsubstantiated claims where she claims to have been gang raped but does not accuse Judge Kavanaugh specifically of the rape.

Swetnick backs up her allegations with her claim that she told both her mother and a police officer of the attack shortly after it occurred, however both are now deceased<sup>15</sup>. Many elected officials, and some in the news media, have raised doubts about Swetnick's credibility and this in part stems from past lawsuits she has been party to. The validity of her story is also called into question by some because of her representation, Michael Avenatti. The allegation first came to light through his Twitter feed without corroboration or vetting by journalists in the print media. Avenatti is currently embroiled in another negative political narrative surrounding his affiliations with a lawsuit against President Donald Trump, who

<sup>11</sup> Emma Brown, "California professor, writer of confidential Brett Kavanaugh letter, speaks out about her allegation of sexual assault," *The Washington Post*, September 16, 2018, [https://www.washingtonpost.com/investigations/california-professor-writer-of-confidential-brett-kavanaugh-letter-speaks-out-about-her-allegation-of-sexual-assault/2018/09/16/46982194-b846-11e8-94eb-3bd52dfe917b\\_story.html?utm\\_term=.1aa43a50bb71](https://www.washingtonpost.com/investigations/california-professor-writer-of-confidential-brett-kavanaugh-letter-speaks-out-about-her-allegation-of-sexual-assault/2018/09/16/46982194-b846-11e8-94eb-3bd52dfe917b_story.html?utm_term=.1aa43a50bb71).

<sup>12</sup> Ronan Farrow and Jane Mayer, "Senate Democrats Investigate A New Allegation of Sexual Misconduct, From Brett Kavanaugh's College Years," op. cit.

<sup>13</sup> IBID.

<sup>14</sup> Avenatti, Michael. Twitter Post, op. cit.

<sup>15</sup> Kate Snow, "Kavanaugh accuser Julie Swetnick speaks out on sexual abuse allegations," *NBC News*, October 1, 2018, <https://www.nbcnews.com/politics/supreme-court/kavanaugh-accuser-julie-swetnick-speaks-out-sexual-abuse-allegations-n915641>.

nominated Judge Brett Kavanaugh to the Supreme Court.

All three initial releases of statements made by Dr. Ford, Ramirez and Swetnick were posted based on unsubstantiated claims. The stories posted in *The Washington Post*, *The New Yorker*, and on Twitter, are based solely on the allegations made by these three women. None of the reporters involved were able to corroborate their stories, thus these media outlets posed a negative political narrative on Judge Kavanaugh's confirmation process. While this does not lessen the charges put upon him, the onus for providing substantial evidence was placed on these women, and on the outlets that reported the stories. The quick publication of these stories fed into the political narrative of slowing down the confirmation process, evidenced in the numerous delays in the Senate Judiciary Committee's voting, and on the eventual hearing that took place involving the testimony of both Dr. Ford and Justice Kavanaugh. Another component of Justice Kavanaugh's confirmation process is the use of social media, seen in Julie Swetnick's sworn declaration posted on Twitter. Social media sites, including Twitter, played a substantial role in the public's perception and opinion of Judge Kavanaugh as a potential Associate Justice.

Social media, and its political implications, negatively impacted the confirmation process of Justice Brett Kavanaugh, and these sites impacted how quickly headlines spread of these allegations. Sites, such as Twitter, provide a platform for individuals to share information quickly to a wide audience. According to the Pew Research Center, approximately 68% of Americans at least sometimes get their news from social media, and this is mostly out of convenience, according to that same survey<sup>16</sup>. The top social media sites that Americans use to get their news are Facebook, followed by YouTube and Twitter<sup>17</sup>. Social media is central to the idea of the media creating

provocative narratives, especially in covering the Trump Administration.

President Trump is central to the narrative of Justice Kavanaugh's confirmation process, and to the use of social media to garner views and clicks to different headlines that impact the public's perception of the process. It is no secret that different media outlets cover the President through different lenses and the viewership of each of these outlets affects how stories are written and how the news is covered. In a similar vein to earlier evidence of unsubstantiated claims against Justice Kavanaugh, depending how an outlet leans politically impacts how many sources, if any, are used to validate stories that involve President Trump. From Pew Research Center, "Seven-in-ten stories from outlets with a left-leaning audience...included at least two of nine types of sources evaluated, such as a member of the administration, a member of Congress, or an outside expert"<sup>18</sup>. However, this is true of only 44% of outlets whose audiences are right-leaning<sup>19</sup>. This approach to covering the Trump White House impacts how the media covers, and how the public views, Judge Kavanaugh's confirmation process in relation to the current political climate.

Another major facet of social media's role in impacting the political narrative surrounding the Supreme Court is breaking news, and social media's ability to disseminate and distribute news in a swift and efficient manner. In some cases, the news is spread before the stories can be properly vetted and fact-checked. President Trump makes frequent use of Twitter to make major policy choices and to announce key components of his governing agenda. He has fired important members of his cabinet, such as Former Secretary of State Rex Tillerson on Twitter, as well as announced that his administration would ban transgendered individuals from joining the military<sup>20</sup>. These details speak to the increased usage of social media to spread news and the

<sup>16</sup> *Pew Research Center*, <http://www.journalism.org/2018/09/10/news-use-across-social-media-platforms-2018/>.

<sup>17</sup> *IBID*.

<sup>18</sup> *Pew Research Center*, <http://www.journalism.org/2017/10/02/covering-president-trump-in-a-polarized-media-environment/>.

<sup>19</sup> *IBID*.

<sup>20</sup> Jessica Estepa, "We're all atwitter: 3 times President Trump made major announcements via tweets," *USA*



quickness with which headlines are read and shared.

The increasing reliance, and importance, of social media and the people and outlets who utilize the platform were only further increased with the announcement of a third accuser of Judge Kavanaugh's, Julie Swetnick. Her sworn statement, and thus her account of what happened to her in the 1980's, was not shared by a journalist through a respected news outlet, like The Washington Post or The New Yorker. Instead, her declaration was first shared with the world on Twitter, through the account of her lawyer, Michael Avenatti<sup>21</sup>. This new medium for news reporting comes with new sets of challenges, including the lack of vetting of information. Since her statement was not vetted prior to being released, this announcement undoubtedly carried negative consequences for Justice Kavanaugh's confirmation, regardless of whether her accusations are true or not. Beginning with Dr. Ford's accusation, followed by Ramirez, and then followed shortly thereafter by Swetnick, each of these announcements slowed down his confirmation. Each caused the Senate Judiciary Committee, and the public, to pause to look into these allegations every time another woman came forward. While much of the reporting done was based on unsubstantiated claims, questions linger as to the thoroughness of the FBI and Senate inquiries into these allegations and further investigations were needed to validate their stories. With headlines racing, and the public becoming increasingly frustrated on both sides of the aisle, it became more difficult for the Senate Judiciary Committee to move forward with its hearings and voting on his nomination.

To show the impact of the overall timeline of these allegations, the progression from nomination to confirmation must be looked at critically. Judge Brett Kavanaugh was announced as the nominee to succeed Justice Anthony Kennedy on July 9, 2018. News of Dr. Ford's allegations, and her

confidential letter, appeared in The Washington Post on September 16, 2018. This was followed by accusations put forward by Ramirez on September 23, 2018. Kavanaugh's final accuser, Swetnick, came forward via Twitter on September 26, 2018. The very next day, both Judge Kavanaugh and Dr. Ford testified in front of the Senate Judiciary Committee on the 27th. On September 28th, the Senate Judiciary Committee voted to send Judge Kavanaugh's confirmation to the full Senate, with the contingency of a one-week FBI investigation into Dr. Ford's claims<sup>22</sup>. This inquiry placed an additional delay on the Senate proceedings, and only further inflamed divisiveness on Capitol Hill, as well as within the greater public. He was finally confirmed to the Court by the full Senate, with a vote of 50 to 48, on October 6, 2018.

The Supreme Court began its terms on October 1st and many who supported Justice Kavanaugh hoped he would be on the bench to begin the term. However, as this timeline shows, his confirmation process was ultimately delayed many weeks by multiple accusations of sexual assault and by the subsequent inquiries done by the government into the validity of these accusations. The length of time ultimately required for Justice Kavanaugh to be appointed to the bench only further inflamed tensions amongst both Democrats and Republicans, and this rift was increasingly felt within the Beltway, as well as throughout the country. Judge Kavanaugh always stood as a divisive figure due to his judicial ideology, however this was only further exaggerated by these allegations. Social media, and the greater news media, also played a role in how the public viewed him throughout this process.

Two of the most popular, and most discussed, news media outlets today are Fox News and CNN. While these outlets are popular among the general public, each network individually caters to a more niche audience, based largely on political party and ideology. Fox News is known to lean more right

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Today, March 13, 2018, <https://www.usatoday.com/story/news/politics/onpolitics/2018/03/13/were-all-atwitter-3-times-president-trump-made-major-announcements-via-tweets/420085002/>.

<sup>21</sup> Avenatti, Michael. Twitter Post, op. cit.

<sup>22</sup> Haley Britzky, "How we got here: the Kavanaugh timeline," *Axios.com*, October 2, 2018, <https://www.axios.com/brett-kavanaugh-timeline-allegations-vote-412d33d6-e5dd-43eb-9322-fd2a3867be9b.html>.

politically, even President Trump is known to favor the network. Fox News tends to be a favorite amongst Republicans. On the other end of the political spectrum, CNN leans left, and is more heavily favored by Democrats. This is exacerbated by the frequency of certain guests on the network. For example, President Trump has been a frequent guest on various Fox News programs since his inauguration<sup>23</sup>. He has not been a guest on CNN nearly as frequently. These divisions also impact the narrative surrounding news and events that are intended to be apolitical, such as Supreme Court confirmations. Understanding how each network covered Judge Kavanaugh's nomination, and the subsequent hearings and votes, lends itself to understanding how different voter blocs viewed Justice Kavanaugh as a nominee.

To understand this concept more clearly, one must look at the perspective and narrative covered on each network. On Fox News, coverage of the hearings and allegations had largely been covered from the perspective of the Justice Kavanaugh camp, and segments often featured the perspective of him and his family. This perspective was also synonymous with that of the White House and to a large extent, the greater Republican Party. During the coverage of the hearing, and during Judge Brett Kavanaugh's opening statement where he was visibly emotional, Fox News commentator Brit Hume noted, "[t]his is raw, his family has been under attack....I don't think the emotion destroys his credibility, in fact it enhances it"<sup>24</sup>. By nature of Fox News being a more conservative media outlet, conservative constituents are more likely to tune in to its programming. During the Judge Kavanaugh hearings and eventual confirmation, this skewed view of the sole perspective of Judge Kavanaugh and his supporters undoubtedly influenced how the

average American interpreted the entire process. By consistently showing only one viewpoint of the situation, more viewers are being persuaded to only one point of view. From the network's standpoint, this is logical. Fox News is showing its viewers the content that the people want to see. However, this increased polarization of major issues to the viewers of Fox News only further inflamed the party politics that were already at play in regard to Justice Kavanaugh.

Conservative outlets, such as Fox News, are not the sole proprietors of a singular view of the process. On the other end of the political spectrum, CNN focused on a different view of the Judge Kavanaugh proceedings. CNN exemplified an alternate view of the scandal in that the network had largely covered the hearings through the lens of Dr. Christine Blasey Ford and the other women to come forward. This women-centric vantage point naturally lends itself to an opposing position to the testimony of Judge Kavanaugh. Intrinsic to the conversation surrounding the Dr. Ford and Judge Kavanaugh hearing is the rise and prominence of the #MeToo Movement, and its support of women coming forward with stories of sexual assault. This was prominent in CNN's coverage of the Dr. Ford and Judge Kavanaugh hearing. Tarana Burke, the founder of the #MeToo Movement, was in the hearing room, and her presence was publicized on CNN<sup>25</sup>. With a victim-centered mindset, CNN tended to cater more towards constituents who were more inclined to believe Dr. Ford. The decisions made by two prominent news outlets, Fox News and CNN, reinforced previously held beliefs of partisan politics. Conservatives, who are more likely to watch Fox News, are seeing content that favors the narrative of Judge Kavanaugh and liberals, who are more likely to tune into CNN, are seeing content

<sup>23</sup> Brian Stelter, "Trump has granted Fox News 19 interviews since inauguration," *Money.CNN.com*, October 25, 2017, <https://money.cnn.com/2017/10/25/media/fox-news-president-trump-interviews/index.html>.

<sup>24</sup> Eli Rosenberg, "A ride on Fox News's roller coaster of emotions during the Kavanaugh hearing," *The Washington Post*, September 27, 2018, [https://www.washingtonpost.com/arts-](https://www.washingtonpost.com/arts-entertainment/2018/09/27/how-fox-is-reacting-fordkavanaugh-hearing/?noredirect=on&utm_term=.59d208500c18)

[entertainment/2018/09/27/how-fox-is-reacting-fordkavanaugh-hearing/?noredirect=on&utm\\_term=.59d208500c18](https://www.washingtonpost.com/arts-entertainment/2018/09/27/how-fox-is-reacting-fordkavanaugh-hearing/?noredirect=on&utm_term=.59d208500c18).

<sup>25</sup> Sunlen Serfaty, "The Founder of the #MeToo Movement is in the Hearing Room," *CNN*, September 27, 2018, [https://www.cnn.com/politics/live-news/kavanaugh-ford-sexual-assault-hearing/h\\_5849b165826218b83ba71f9ef1169341](https://www.cnn.com/politics/live-news/kavanaugh-ford-sexual-assault-hearing/h_5849b165826218b83ba71f9ef1169341).



that favors Dr. Ford. These biases were present prior to Justice Kavanaugh's nomination, yet they were further explicitly re-enforced by the ensuing situation.

Not only was the Senate Judiciary Committee hearing covered differently by these two outlets, the subsequent FBI investigation into Dr. Ford's allegations was also discussed in different tones. Fox News tended to take a more confrontational view of the FBI investigation and many believed it to be unnecessary. Some at the network grew quite frustrated with the process saying "the opposition to Kavanaugh has nothing to do with his qualifications to serve on the Supreme Court. It has everything to do with liberal efforts to turn the Supreme Court into another policy-making body like Congress that will implement their far-left public policy views<sup>26</sup>." Many Republicans on Capitol Hill felt that an additional FBI inquiry into Ford's allegations was not warranted and they were frustrated that this one-week investigation further delayed Judge Kavanaugh's confirmation. This delay was thought to further disenfranchise wavering support for Judge Kavanaugh, and thus was frustrating to Republicans within the Senate that were supportive of his confirmation.

The scope of the FBI investigation is portrayed in a different light by other outlets, including CNN. Noted specifically for its limited scope, and oversight by the White House, reporting conducted by CNN pointed out the flaws in the investigation. According to reports, neither Judge Kavanaugh nor Dr. Ford spoke with the FBI and Judge Kavanaugh's drinking habits were also not part of the investigation<sup>27</sup>. The scope of this investigation played into the larger political narrative because many viewed the limited scope as beneficial to Republicans and those who support Kavanaugh, and detrimental, if not outright insulting, to Democrats and those who support Dr. Ford. Outlets, like CNN, focused on the scope of the investigation and how little the media was permitted to know prior to its release

and Judge Kavanaugh's eventual confirmation vote. This one-week investigation assuredly delayed Judge Kavanaugh's confirmation, but in the end its harm to Judge Kavanaugh was minimal. The investigation's greatest detriment was a forced longer waiting time until his confirmation, but the limited scope of the investigation did not produce new evidence or provide any greater clarity to the allegations made against Judge Kavanaugh.

Through a myriad of evidence of unsubstantiated claims, the creation of provocative narratives, and further inflaming party politics, the media negatively impacted the political narrative of Justice Brett Kavanaugh's confirmation. In the case of Dr. Ford and Deborah Ramirez, the print media did not rely on further evidence of their claims of sexual assault before printing their stories in both *The Washington Post* and *The New Yorker*. Judge Kavanaugh's third accuser, Julie Swetnick, came forward on social media through a sworn declaration without further proof of her claims. Social media played an important role in the creation of provocative narratives. As a direct line of communication between important political figures, such as President Trump and lawyer Michael Avenatti, the public and the media was able to get important and unfiltered information quickly. Breaking news headlines are now often published on social media sites, like Twitter, before more traditional sources, like the news and print media, are able to properly vet and cite sources. Finally, through traditional partisan politics, liberal sources such as CNN, and conservative sources like Fox News, played into the mindset of their base. By characterizing the Senate Judiciary Hearing as in favor of either Judge Kavanaugh or Dr. Ford, these outlets further divided the American public and often only portrayed one side of the story. These divisions have serious implications for the federal institutions that the public relies on for accurate and nonpartisan information.

<sup>26</sup> Hans A. Von Spakovsky, "Kavanaugh Saga: What the FBI Report Really Tells Us," *FoxNews.com*, October 4, 2018, <https://www.foxnews.com/opinion/kavanaugh-saga-what-the-fbi-report-really-tells-us>.

<sup>27</sup> Eli Watkins, Jeff Zeleny and Josh Campbell, "FBI's Kavanaugh investigation narrow in scope," *CNN*, October 1, 2018, <https://www.cnn.com/2018/09/30/politics/fbi-brett-kavanaugh-investigation/index.html>.

In an analysis taken from the institutional perspective, it is clear that the negative political narrative surrounding Brett Kavanaugh's confirmation process impacts the judicial, legislative, and executive branches of the federal government. From a judicial perspective, the Supreme Court tends to stay away from partisan politics. It is imperative the Court remain nonpartisan. The public needs to view the Supreme Court, and its members, as wholly independent from the other two branches of government, especially the executive branch under a president that nominated a particular Justice. The impact to the executive branch can also be substantial on two fronts. If someone is nominated to the Court early in a president's term, then the results and implications of that person's confirmation, or rejection, by the Senate can be crucial for the remainder of that president's time in office. The public's perception of that candidate can even affect the midterm elections, as was seen in the 2018 midterm races. Second, Justice Kavanaugh's confirmation to the bench impacts the legacy of the Trump Administration. The Trump White House remained an ardent supporter of Justice Kavanaugh throughout his confirmation process. This increased intermingling between separate entities showed that Justice Kavanaugh plans to fulfill the wishes of the Trump Administration long after President Trump leaves office. Finally, the legislative branch will be impacted by the confirmation of Justice Kavanaugh. The Senate, specifically the Senate Judiciary Committee, was under increased scrutiny throughout the entire confirmation process. This increased media attention on both houses of Congress, and also on individual members, can increase the pressure on those members during their reelections. This has the potential to influence how certain members voted on his confirmation and on subsequent votes on key pieces of legislation that could one day be heard before the Supreme Court.

Justice Brett Kavanaugh's confirmation to the Supreme Court has a myriad of effects for the judicial branch, and for the Supreme Court. With his confirmation, the Court has moved decisively to the right politically, and more conservative in principle. Justice Kavanaugh replaced Justice Anthony Kennedy, who was often viewed as the swing vote on the bench. There are now four reliably liberal justices, Justices Breyer, Kagan, Ginsburg and Sotomayor, and four reliably conservative justices, Justices Roberts, Alito, Thomas and the recently confirmed Neil Gorsuch. Justice Kennedy was left to represent the center. He increasingly voted with the conservative bloc in recent years, however he remained the face of the middle ground within the Supreme Court. Justice Kavanaugh is a much stronger conservative, and thus with a strong five-member majority, many predict that the Supreme Court will shift to the right for many years, or even decades, to come.

This partisan divide also impacts the executive branch and the president who nominates an individual for the Court. Justice Kennedy announced his retirement on June 21, 2018, and President Trump nominated his successor just a few weeks later on July 9th. The nomination of a Supreme Court Justice was so crucial to the candidacy of Donald Trump that he released a list of potential candidates for the bench before even winning the election. Of the constituents who voted for Donald Trump, 26% reported that Supreme Court nominations were the most important factor in their decision-making for the Presidency<sup>28</sup>. The nomination and confirmation of Supreme Court Justices have a two-fold impact on the executive branch: they affect the leadership capabilities of the sitting President and they hold future implications for that particular administration for years or decades into the future.

Nominees for the bench tend to distance themselves to some degree during the confirmation process, most want to keep up appearances of nonpartisanship. However, this

<sup>28</sup> Philip Bump, "A Quarter of Republicans Voted For Trump to Get Supreme Court Picks – And it Paid Off," *Washington Post*, June 26, 2018, <https://www.washingtonpost.com/news/politics/wp/2018/06/26/a-quarter-of-republicans-voted-for-trump-to->

[get-supreme-court-picks-and-it-paid-off/?utm\\_term=.06cb1adb4ebc](https://www.washingtonpost.com/news/politics/wp/2018/06/26/a-quarter-of-republicans-voted-for-trump-to-get-supreme-court-picks-and-it-paid-off/?utm_term=.06cb1adb4ebc).

was not the case during the Justice Kavanaugh confirmation. The Trump Administration remained deeply entangled with Justice Kavanaugh and defended him through three separate allegations of sexual assault and misconduct. Many even claimed that he was speaking directly to the President himself through his testimony before the Senate Judiciary Committee when he was refuting allegations of sexual assault made by Dr. Ford. This deep entanglement can be viewed as clouding the leadership capabilities of the President because he has become so entrenched in the affairs of the Senate and of the Judicial Branch. The system of checks and balances works in this country because of the separation of powers and how each branch retains some level of autonomy from the others. However, if the executive branch is seen to be exerting pressure, in this case on the legislative branch to confirm Justice Kavanaugh, then that can infringe on the normal and productive operations of the government.

The negative push-back experienced by Justice Kavanaugh after each accusation of sexual assault ultimately reflected poorly on the Trump Administration. President Trump has always been critical of the media and the negative media coverage that Justice Kavanaugh was receiving did not ease tensions between President Trump and the media. This negative relationship between the two, and the negative view of Justice Kavanaugh, can have negative implications for the Supreme Court for years or decades to come. Justice Kavanaugh is 53 years old. Therefore, he can easily serve on the bench for many decades. While many administrations relish in the opportunity for the recognition of the nominating president for years to come, in this situation that could spell disaster for the Trump Administration. President Trump has been viewed unfavorably by a majority of the nation since soon after his election victory and that negativity can cloud the prestige of the administration. Justice Kavanaugh is now synonymous with the accusations of assault against him; President Trump is synonymous with Justice Kavanaugh, and thus sexual assault. This is

surely not what the Trump Administration intended when formulating its legacy, yet the negative media coverage will live on far beyond President Trump's time in office and will likely follow Justice Kavanaugh for the remainder of his career on the bench.

It has become abundantly clear in recent election cycles that the United States is becoming increasingly polarized and divisive, and the legislative branch is no exception to this phenomenon. Nominees to the bench have been confirmed with increasingly small majorities, and the confirmation of Justice Kavanaugh is no exception. The partisanship within Congress has become so divided that members of opposing parties often times will not even entertain the idea of confirming a nominee under a President of the opposite party. The nomination of Merrick Garland under President Obama is evidence of this division. President Trump then nominated Neil Gorsuch to fill the vacancy and he was later confirmed. Garland never received a hearing in the Senate. The reason for this increased division within the country has many sources and a divisive constituency lends itself to a divided Congress. For much of 2018, the approval rating of Congress has hovered roughly around the 20% threshold, according to Gallup<sup>29</sup>. Both sides of the political aisle had many faults through the Kavanaugh confirmation process, thus only further damaging the reputation and polarization in Congress. Increased partisanship and division often leads to distrust of elected officials. In a time of heated tensions on Capitol Hill and instability on the international stage, it is more imperative than ever that the people have trust in their elected officials and that they trust those individuals to make the right choices when it comes to properly representing their constituency.

While Congress overall was impacted by the confirmation process of Justice Kavanaugh, the media paid attention to the Senate and how key members would be voting on his confirmation. With the 2018 midterm elections being held so soon after Justice Kavanaugh's confirmation vote, many feared that the bitterness experienced

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<sup>29</sup> Congress and the Public, *Gallup.com*, <https://news.gallup.com/poll/1600/congress-public.aspx>

throughout the confirmation process would bleed into election season; they were correct. Many predicted that Democrats would retake the House of Representatives, which they did. Republicans remained in control of the Senate and even expanded their majority with a few key pick-ups. What is interesting to note are the particular Senators in key states who voted either for or against Justice Kavanaugh, and how they fared in their more localized election. Senator Heidi Heitkamp of North Dakota was a critic of Justice Kavanaugh, and ultimately voted against his confirmation; she lost her bid for reelection to the Senate. A similar outcome resulted for Democrat Joe Donnelly of Indiana, who also lost reelection. This was also experienced by Senator Claire McCaskill of Missouri. Incidentally, the only red-state Democrat to win reelection was Senator Joe Manchin of West Virginia, who ultimately voted in favor of confirming Justice Kavanaugh. Clearly, states that tend to lean more Republican tended to view Justice Kavanaugh more favorably and the voting record of these Senators became a major topic of discussion in their bids for reelection to the Senate.

The news coverage of Justice Kavanaugh's confirmation process from beginning to end was divided between two types of questions: the political question and implications of voting affirmatively and the ethical questions that arose after accusations of sexual assault were made against him. The political question, seen in the losing reelection bid of a handful of Senators, can have grave consequences for the future of the Senate, and certainly for the members elected to serve the next six years. With the House of Representatives becoming more Democratic, and the Republicans increasing their hold in the Senate, the federal government will become more polarized until the next Presidential election in 2020. The framing of these key votes in the Senate by the media is also essential to understanding the polarization within the country. Many news media personalities and network programs chastised

Republicans for voting in favor of Justice Kavanaugh and praised Democrats for opposing him. A similar phenomenon was seen during the 1990's during the confirmation process of Justice Clarence Thomas, who faced his own accusations of sexual assault by Anita Hill. He ended up being confirmed by a slim majority, 52-48, which was extremely rare for the time<sup>30</sup>. In many respects, the news media forced a political question into a moral one. A handful of Senators, such as Senators Heitkamp, Donnelly and McCaskill, paid a hefty price for this shift.

The question of whether to vote to confirm Justice Kavanaugh was more than a strictly political and partisan question, it was also a deeply personal and ethical question. A Senator on the Senate Judiciary Committee, Jeff Flake, was visibly distraught and upset through the proceedings, and it was clear that he was conflicted on how to vote. He is a Republican in a right-leaning state, and he had already announced that he would not be running for reelection, so that particular fear was mitigated. However, the weight of the moral question presented to him showed itself throughout the voting process. He was not alone; other Senators both on the Judiciary Committee and within the full Senate often seemed conflicted on how they planned on voting. Although the FBI did investigate the allegations made by Dr. Ford, and the testimony of both Dr. Ford and Judge Kavanaugh was heard, this was not a criminal investigation in a court of law. This shifted the burden of proof in some respects because these Senators were not tasked with deciding whether Justice Kavanaugh was guilty or innocent, but rather if Dr. Ford's testimony was credible enough to halt his confirmation. Many women's advocacy groups were vocal throughout this process, and their members often encouraged their elected representatives not to vote to confirm Justice Kavanaugh. The coverage in the press and news media of these groups also influenced how a number of Senators ultimately voted.

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<sup>30</sup> Supreme Court Nominations: present-1789, *Senate.gov*, <https://www.senate.gov/pagelayout/reference/nominations/Nominations.htm>.

In mid-September, the media was swarming in the midst of the Senate hearings with a story of two women ambushing Senator Jeff Flake in an elevator on Capitol Hill. In this instance, the media was vital in turning a political question, Senator Flake's voting in favor of Justice Kavanaugh, into a moral question by highlighting the stories of sexual assault these women shared. In a video captured and shared on the news and circulated on social media, Senator Flake looks visibly uncomfortable and can be seen averting his eyes from the women speaking to him<sup>31</sup>. The rapid spread of this video shows how, from an institutional perspective on the legislature, the confirmation process of Justice Brett Kavanaugh personally impacted members of the Senate. After this incident, Senator Flake called for a one-week FBI investigation into Dr. Ford's claims before he would be willing to vote in favor of confirmation. This is further evidence that the media was able to slow down Justice Kavanaugh's confirmation process, even if not able to fully end his confirmation to the Court.

Clearly, from an institutional perspective spanning the implications of the judicial, executive, and legislative branches of the federal government, the contentious confirmation process of Justice Brett Kavanaugh impacted all three branches for years to come. These implications are most obvious within the judicial branch, where Justice Kavanaugh himself will have the eligibility to work as an Associate Justice on the Supreme Court for many decades to come. His status as a staunchly conservative Justice on the Court also has implications for the longevity of the Trump Administration, its policies, and ideals. This notion then translates to the executive branch, where the public popularity of the President took a hit after the allegations of sexual assault made against Justice Kavanaugh became public. This can make it more difficult for the President to be part of important policy decisions affecting the country and could lessen his impact of persuading Capitol Hill to pass legislation. This altered relationship between the executive and the legislative branch is

further emphasized with the recent midterm elections and the outcomes of certain races for red-state Democrats that opposed Justice Kavanaugh's confirmation. Now with a divided government, the executive and legislative branches will inevitably find it more difficult to pass legislation, which could then in turn create more opportunity for these important policy questions to be raised in a third, and nonpartisan, body like the Supreme Court.

Beginning with Justice Brett Kavanaugh's confirmation to the Supreme Court earlier this year after the retirement of Justice Anthony Kennedy, his confirmation seemed an all but assured win for the Trump Administration, and for conservatives throughout the country. Justice Kavanaugh was distinctly qualified for the position, and he presented himself to the nation as a family man who cared about the rule of law and protecting individual freedom and liberty. However, the timeline of his confirmation was halted when Dr. Christine Blasey Ford came forward with accusations of sexual assault against Justice Kavanaugh. Her claims were later bolstered by two more women coming forward, Deborah Ramirez and Julie Swetnick. The media played an extremely influential role in narrating this process and of influencing how average citizens saw each of these women, and in turn, how they viewed Justice Kavanaugh. There were three main avenues utilized by both the print and news media to slow down Justice Kavanaugh's confirmation process. Through the usage of unsubstantiated claims, creating and spreading provocative narratives and further inflaming party politics, the media was able to substantially slow down Justice Kavanaugh's confirmation to the Supreme Court. The media was able to slow down the process to such a degree that he was not able to join the Court for the beginning of the new term, which began on October 1st of this year. The ramifications of these actions on the part of the media, and the subsequent American public who was tuning in to read these stories and headlines, had significant

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<sup>31</sup> Niraj Chokshi and Astead W. Herndon, "Jeff Flake is Confronted on Video by Sexual Assault Survivors," *The New York Times*, September 28, 2018,

<https://www.nytimes.com/2018/09/28/us/politics/jeff-flake-protesters-kavanaugh.html>.



implications for all three institutions at the federal level.

While the ways in which the executive, legislative and judicial branches were impacted by this slowed and tumultuous confirmation process are key, it is important to note that Justice Brett Kavanaugh was still ultimately pushed through the Senate and confirmed. He was confirmed by the Senate and officially sworn in as an Associate Justice of the Court in early October of 2018. The political narrative negatively impacted the confirmation process of Justice Kavanaugh and ultimately slowed down his confirmation to the Court, which in many respects shows that the media was successful. The print and news media on both sides of the political aisle raised important questions and more fully informed the American people of the person who would be joining the Supreme Court.

While the media was successful in this respect, it was not ultimately able to end his confirmation to the Court. The slowing down process allowed for a broader and more in-depth look at Justice Kavanaugh's past, and his eligibility to serve on the Court, yet the findings were not devastating enough to end his confirmation. While the entire process was troublesome for all parties involved, including the Senate, the White House, and even Dr. Ford and Justice Kavanaugh, the Trump Administration and conservatives still prevailed. In the short term, this process has affected all three branches of the federal government for the foreseeable future. The long-term effects of this ordeal are yet to be determined, but the ascension of Justice Brett Kavanaugh will surely impact how future nominees to the Court will be viewed and interviewed by the Senate, and by the media. A more thorough vetting process is required on all fronts and it is likely that Justice Kavanaugh will be a staunch conservative on the bench for many years and possibly, decades to come.

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